



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)
Via Zoom Meeting ID# 892 7566 7485
TUESDAY, AUGUST 27, 2024 @ 1:00 PM

MINUTES OF THE TOWN COUNCIL

Roll Call.

Members Present: Mayor Clayton Calloway, Council Member Larry Freeberg, Council Member Kelly Marshall, Council Member Martin Tidwell.

Members Absent: Council Member Mitch Ricks.

Staff Present: Nancy Leigh, Town Clerk; Chief Dan Benson, Public Safety Director; Shane Williamson, Town Treasurer; Jon Ficken, Public Works Director; Ciera Claridge, Deputy Clerk; Greg Sant, Planning Administrator; Bret Howser, Town Manager (via Zoom)

A. CALL TO ORDER

Mayor Calloway called the regular meeting of the Town Council to order at 1:00 p.m.

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:

1. July 11, 2024, Town Council Special Meeting Minutes

Motion: Council Member Tidwell moved to approve the July 11, 2024, Town Council Special Meeting minutes as presented. Council Member Freeberg seconded the motion.

Action: **Motion carried 3-0-1 (summary: Yes=3 No=0 Abstained=1 Vote: Yes:** Council Member Tidwell, Council Member Freeberg, Mayor Calloway. **Abstained:** Council Member Marshall. **Absent:** Council Member Ricks).

2. July 23, 2024, Town Council Meeting Minutes

Motion: Council Member Tidwell moved to approve the July 23, 2024, Town Council Special Meeting minutes as presented. Council Member Freeberg seconded the motion.

Action: **Motion carried 3-0-1 (summary: Yes=3 No=0 Abstained=1 Vote: Yes:** Council Member Tidwell, Council Member Freeberg, Mayor Calloway. **Abstained:** Council Member Marshall. **Absent:** Council Member Ricks).

1
2
3 **3. August 13, 2024, Town Council Meeting Minutes**
4

5 **Motion:** Council Member Marshall moved to approve the August 13, 2024, Town
6 Council meeting minutes. Council Member Freeberg seconded the motion.

7
8 Council Member Tidwell commented that he and Council Member Freeberg
9 were absent from this meeting.

10
11 **Motion:** Council Member Marshall moved to withdraw her motion to approve the
12 August 13, 2024, Town Council meeting minutes due to the lack of votes.
13 Council Member Freeberg withdrew his second.

14
15 **Motion:** Council Member Marshall moved to table the August 13, 2024, Town
16 Council meeting minutes. Council Member Freeberg seconded the motion.

17 **Action:** **Motion carried 4-0-0 (summary: Yes= 4 Vote: Yes: Council Member**
18 **Marshall, Council Member Freeberg, Council Member Tidwell, Mayor**
19 **Calloway. Absent: Council Member Ricks).**
20
21

22 **E. REPORTS / PUBLIC INPUT ON NON-AGENDA ITEMS.** Public input is limited
23 to three (3) minutes on non-agenda items.
24

25 **Nancy Leigh, Town Clerk,** reported the annual Town Fall Cleanup is scheduled for September 4,
26 2024, beginning at 9:00 a.m. Garbage bags and gloves are available for the public at the Town
27 offices and lunch will be provided for participants at the Town Pavilion at noon.
28
29

30 **F. AGENDA ITEMS:**
31

32 **1. PUBLIC HEARINGS ON THE CREATION OR DESIGNATION OF THE:**
33

- 34 a. **RANGER COURT SPECIAL ASSESSMENT AREA (2024-01) and**
35 b. **ELK DRIVE SPECIAL ASSESSMENT AREA (2024-01)**
36

37 Shane Williamson, Town Treasurer, gave a brief history of the Ranger Court Special
38 Assessment Area (SAA) and the Elk Drive SAA. Shane reported that both of these SAAs
39 petitions have been accepted by the Town Council and the Notice of Intent has been
40 mailed to the property owners. Shane reported that this public hearing will begin the 60-
41 day protest period for each of the SAA and during the December Council meeting, the
42 Council will consider a resolution for the Notice of Creation or if there is 40% or more in
43 written protests submitted, then the Council will adopt a resolution abandoning the SAA.
44

45 Mayor Calloway recessed the regular meeting of the Town Council and stated that the
46 Council would not engage with the public during the hearing but would answer any
47 questions after the public hearing is closed. Mayor Calloway opened the public hearing at
48 1:09 p.m.
49

50 **Susan Loftman,** 949 Ridge Top Drive, commented she has been a property owner for 5+
51 years. Ms. Loftman reported she submitted a letter of protest along with her co-owner of
52 the property against the SAA (see attached). Ms. Loftman commented that her biggest

1 issue is not whether or not the water should be brought there, but that she doesn't
2 understand is there are 18 property owners and the requirement of 40% protests to fail the
3 SAA is based on how many letters are sent out. She has tried to contact the neighbors and
4 they do not respond because many of them are owned in a Trust, so how would the Town
5 know if there are 40% protests when there are people who don't even look at the letters?
6 Ms. Loftman commented that she is concerned that people are going by the fact that they
7 were going to get water brought to the area, but no sewer and it is her understanding that
8 it would have to be piecemealed and most owners don't know that they are going to be
9 charged for sewer in the future. Ms. Loftman commented that the Notice of Intent should
10 be required to show that sewer would be required to be paid for in the future, which is a
11 large bill and the laws are stringent to get sewer. Ms. Foreman reported that the Health
12 Department will not allow her to put a septic tank in her property and there are only four
13 homes on her road with one home that already brought water to their location. She
14 believes the Town is putting the cart before the horse.

15
16 Ms. Loftman explained she has been to her property monthly and hasn't seen any
17 movement except for two lots and she feels that a different letter should be sent out.
18 There are waterline improvements along with street improvements and believe it needs
19 defining. Ms. Loftman inquired as to when the Town expects to bring sewer in the area
20 and how soon sewer will be available for them to use water. Ms. Loftman also inquired as
21 to what happens to those who are in a Trust and she would like to see a fairer assessment
22 for protests since a non-answer is identified as agreeing to the assessment. Ms. Foreman
23 reported there are only four homes in the Ranger Court SAA area and she believes there
24 are other areas that would benefit more.

25
26 **Cecile Wallis**, 325 Elk Drive, commented that she and her husband have lived in Brain
27 Head for the past eight years and on Elk Drive for the past three years. Ms. Wallis
28 reported she received a letter from the SAA for \$27,000 for water system improvements,
29 which is an estimate from the engineer, and understands that there would be a more
30 formal cost when the project goes out to bid from the contractor. Ms. Wallis inquired if
31 the property owners are going to be responsible for the impact fees and the connection
32 fees and if there will be additional costs. She understands that some will pay cash for the
33 project and some will have to pay for it over the next 10 years and she would like to know
34 the actual cost of the project. Ms. Wallis commented that when the Town does send out
35 the final letter with the final numbers, she would like to have the costs broken down so
36 they know what they are paying for clarification purposes.

37
38 There were no other comments and two written comments were submitted (see attached)
39 for the Ranger Court SAA. Both letters were in opposition to the Ranger Court SAA and
40 for lot #3.

41
42 Mayor Calloway closed the public hearing at 1:17 p.m. and reconvened the regular
43 meeting.

44 **Questions Raised from Public Hearing:**

45
46 Bret Howser, Town Manager, explained that the Council waived the impact fees for the
47 SAAs for Trail Road, Falcon Court, and Lupine Court, but it has been an administrative
48 policy and it may vary depending on the circumstances. Bret explained the Council is
49 under no obligation to waive the impact fees since the impact fees pay for system
50 improvements such as water storage tanks and impacts on the system.
51

1 Bret reported that the waterlines have been installed without the sewer lines but he has
2 not run across an example where the Health Department denied a septic tank permit other
3 than a waterline was required. Bret explained that it would be some time, at least ten
4 years before the Town has the legal capacity for sewer since it would need to finish up on
5 the current SAAs, and there would need to be a petition from the neighborhood submitted
6 to the Town requesting sewer system improvements and would not be a piecemeal type of
7 project.

8
9 Bret reported that individual owners could run a sewer line through the neighborhood via
10 a Pioneering Agreement since the Town does not have any plans to run sewer lines
11 through the neighborhood nor does the Town have the funding for sewer line expansion.
12

13 Mayor Calloway responding to the comment regarding contacting people and not caring,
14 in which the Town is following the state statute and is required to do so and the other
15 issue the Town is addressing is fire mitigation with the SAAs.
16

17 Council Member Marshall commented that when Ranger Court SAA was originally
18 brought before the Council, it was discussed with sewer and the issue was the constraints
19 on how much it can run with an SAA with the assessed value of the property in which the
20 improvements cannot exceed 1/3 the value of the property. Council Member Marshall
21 commented that the Town completed a Septic Density Study and it was determined that
22 the Town was in decent shape. With the Ranger Court area backed up to open space, it
23 would not create an area with backup with other septic tanks and that was one of the
24 reasons. Council Member Marshall commented that she currently understands the Health
25 Department will allow a septic tank as long as there is a water source.
26

27 Council Member Tidwell commented that the Town identified a total of 83 septic tank
28 permits and completed the Septic Density Study because the Town didn't want to
29 contaminate the Town's water supply is why the Town went through the process.
30

31 The Council thanked the public for their comments.
32
33

34 **2. FINDINGS, RECOMMENDATION AND DECISION OF THE BOARD OF**
35 **EQUALIZATION FOR ASSESSMENT AREA NO. 2023-1 (SNOWSHOE-TOBOGGAN)**
36 **AND AN ORDINANCE CONFIRMING THE ASSESSMENT LISTS AND LEVYING AN**
37 **ASSESSMENT AGAINST CERTAIN PROPERTIES IN THE DESCRIBED ASSESSMENT**
38 **AREA, FOR THE PURPOSE OF PAYING ALL OR A PORTION OF THE COST OF**
39 **WATER IMPROVEMENTS; ESTABLISHING A RESERVE FUND; ESTABLISHING THE**
40 **EFFECTIVE DATE OF THIS ORDINANCE; AND RELATED MATTERS.** An ordinance
41 adopting the final assessment for the Snowshoe/Toboggan SAA.
42

43 Shane Williamson, Town Treasurer, presented a draft ordinance adopting the final assessment
44 for the Snowshoe-Toboggan Special Assessment Area (see attached). Shane gave a brief
45 explanation of the Snowshoe-Toboggan SAA. Shane reported that once the ordinance is
46 adopted and recorded with the County Recorder, it allows for a 25-day prepayment period for
47 owners and would remove the interest accrual if paid within 25 days. Shane reported that the
48 Drinking Water Board loan is a no-interest loan on their portion of the funding.
49

50 Shane reported that the Board of Equalization was held on July 31, August 1st, and 2nd in
51 which the Board did not receive any property owners who appealed their assessment with the
52 Board. Shane reported the cost per lot is \$9,998 for ten years and will be billed through their

property taxes. The property owners have the option to pay off their assessment at any time throughout the term. The final loan and issuance is \$665,000, with \$20,000 in issuance costs and a contribution from the Town of \$375,000 and the rest coming from the Division of Drinking Water as a no-interest loan. Bret reported that the Council will need to hold a discussion on the administrative policy for the impact fees and whether they are waived or not.

The Council discussed the following:

1. Council Member Tidwell suggested keeping the impact fees separate from the SAA. Mayor Calloway recommended the Council decide on the impact fees at a different meeting.
2. Council Member Freeberg commented that he would like to know the distance of the water lines and the cost per foot how the contractors bid it and how the engineers estimate it.
3. Mayor Calloway suggested meeting with the Public Works Director for that information. Jon Ficken, Public Works Director, commented that an estimate was roughly \$200 per foot, but would need to verify it.

Motion: Council Member Marshall moved to adopt ordinance No. 24-010, an ordinance adopting the Findings, Recommendations, and Decisions of the Board of Equalization for the Snowshoe/Toboggan Special Assessment Area (2023-1) and an Ordinance confirming the assessment lists and levying an assessment against certain properties in the described assessment area for the purpose of paying all or a portion of the cost of water improvements; establishing a reserve fund; establishing the effective date of this ordinance; and related matters. Council Member Tidwell seconded the motion.

Action: **Motion carried 4-0-0 (summary: Yes= 4 Vote: Yes: Council Member Marshall, Council Member Tidwell, Council Member Freeberg, Mayor Calloway. Absent: Council Member Ricks).**

3. **LAND MANDMENT CODE AMENDMENTS FOR CHAPTER 7 ZONE DISTRICT REGULATIONS FOR SETBACK EXCEPTIONS AND CHAPTER 12 DESIGN STANDARDS FOR SNOW STORAGE, CLADDING, AND COLORS.** An ordinance amending the Land Management Code, Chapter 7 and Chapter 12 for setback exceptions, cladding requirements, snow storage, and colors.

Bret Howser, Town Manager, presented a draft ordinance amending the Land Management Code, Chapters 7 Zone District Regulations, and Chapter 12 Design Standards for Construction (see attached). Bret reported that the proposed amendments are for setback exceptions, snow storage, cladding, and colors.

Bret reported that the Planning Commission made a recommendation for snow storage at 25% for multi-family residential (R3) and commercial zones for hardscapes (driveways and parking areas).

Setback Exceptions are identified in the proposed amendments in the draft ordinance (see attached) Bret explained that the setback exceptions would allow a covered deck within the setback 4'. The other exception that was addressed was the space under a garage and if it was allowed for living space.

Colors: Bret explained the Council decided to stay with the complementary to the natural landscape instead of selecting specific colors. The colors would relate only to R3 and commercial buildings and he included the building articulation concept as well. Bret explained that under “Mass, Scale and Composition” and part of the building itself is too large, it is more about breaking up the building with varied materials and how they will differentiate the building. Bret reported that this was not the recommendation of the Planning Commission but was based on his conversation with the Council in a previous meeting.

The Council discussed the following:

1. Greg Sant, Building Administrator, reported that the proposed amendments give the Town flexibility, and the Planning Commission will still be reviewing the colors and designs of the buildings for R3 and commercial.
2. Mayor Calloway inquired if in the color section, the word “subdued” was adequate language. Greg responded that it gave an idea of what the Town did not want and would have a discussion with the applicant on R3 and commercial before it goes to the Planning Commission.
3. Discussion centered on the color “bright white” which is currently allowed as long as it is below 25% and not the main color.
4. Council Member Tidwell inquired if a retaining wall would be considered for colors since there is a large retaining wall that was recently installed. Greg responded that he would need to research it further in the Town Code since other chapters address retaining walls.
5. Council Member Tidwell commented that the current Town Code is vague since a retaining wall that is bright white could be construed as natural but it is not natural to Brian Head. Bret reported that according to the Town Code, the retaining wall should be color-tinted and approved by the Town Manager. Bret reported he will review the retaining wall the Council is referring to, but believes the wall was approved by the Planning Commission two to three years ago.
6. Council Member Marshall commented she is in agreement with the proposed language and believes it will help with the color issues. Council Member Marshall went on to comment that once extra gables are added, there will be leaks from them with siding and ice dams.
7. Council Member Marshall recommended additional language to the snow storage for R1 in 9-12-15(k)(a) to provide 20% additional area to accommodate snow storage.

Motion: Council Member Marshall moved to adopt ordinance No. 24-011, an ordinance amending the Land Management Code, Chapters 7 Zone District Regulations, and Chapter 12 Design Guidelines for Construction as presented with the addition of the following:

- 9-12-15(K)(a) ADD: “Provide 20% additional area to accommodate for snow storage”.

Council Member Tidwell seconded the motion.

Action: **Motion carried 4-0-0 (summary: Yes = 4 Vote: Yes: Council Member Marshall, Council Member Tidwell, Council Member Freeberg, Mayor Calloway. Absent: Council Member Ricks).**

4. WATER AND WASTEWATER IMPACT FEE ORDINANCE. An ordinance adopting the Water and Wastewater Impact Fees.

Bret Howser, Town Manager, presented a draft Water and Wastewater Impact Fee ordinance (see attached). Bret gave a brief background on the impact fees for the water and sewer. Bret

1 reported that there is a partial sewer impact fee for the Snowshoe/Toboggan Special
2 Assessment Area and the proposed ordinance has been drafted to identify the
3 Snowshoe/Toboggan area. The ordinance also repeals the existing water and sewer impact
4 fee ordinance.
5

6 Bret explained the ordinance identifies the Snowshoe/Toboggan SAA sewer impact fees of
7 approximately \$5,000 and is identified as a separate area in the ordinance. The ordinance is
8 based on the sample from the Ombudsman which includes an appeal process and has an
9 effective date of 90 days from the date of adoption and includes the maximum amount that
10 can be adopted, but the actual amount will be identified in the Consolidated Fee Schedule.
11 Bret reported the fees will be adopted after 90 days and identified in the Consolidated Fee
12 Schedule.
13

14 The Council discussed the following:

- 15 1. Mayor Calloway inquired as to the Snowshoe/Toboggan maximum sewer impact fee,
16 which could be \$25,000, but shows that the maximum was 20%. The calculated fee is
17 the analysis which will be part of the ordinance. Bret responded that it was identified
18 in the ordinance because if the maximum amount were identified in the ordinance, his
19 concern was that he would hear from the property owners in the
20 Snowshoe/Toboggan SAA area about the amount of \$25,000.
- 21 2. Mayor Calloway commented that he would like to see the savings the Town is giving
22 Snowshoe/Toboggan SAA property owners in which the Town is charging \$5,651+
23 vs. \$25,000 that they could charge them as the maximum amount for a sewer impact
24 fee.
- 25 3. Mayor Calloway inquired as to the Treatment and Collection column amount of
26 \$1,804.23. Shane responded that the table was not updated to \$1,810.10.
- 27 4. Mayor Calloway proposed to calculate the impact fee for Snowshoe/Toboggan SAA
28 to identify the 20% of the \$23,410 and add the \$1,810 which would come to \$5,651.
- 29 5. Bret explained that if he identified 20% of \$23,020 and the treatment portion of \$1,810
30 for an amount of \$4,900+.
- 31 6. Mayor Calloway inquired if a building permit is pulled but nothing is ever built,
32 would the developer get a portion of the impact fees back? Bret responded that the
33 Town spends the funds within a year of receiving them to pay for the debt service for
34 the water fund. If the Town already spent the funds, then the town is not obligated to
35 refund the fees.
- 36 7. The Impact Fee Analysis includes a three percent (3%) inflation factor and the Town
37 will need to review the impact fees every six years but can be reviewed more
38 frequently if the Council desires but would need to go through the statutory process.
- 39 8. Bret inquired if the Council wanted to set the maximum amount of the impact fees in
40 the ordinance and setting the fees in the Consolidated Fee Schedule, but the argument
41 for setting the maximum amount of fee at the 20% rate is to indicate some
42 predictability the maximum fee and new Council Members and staff may not
43 remember and they see the maximum fees, they may want to go with the maximum
44 fee. This could be an indicator to future Council Members and staff.
- 45 9. Council Member Marshall suggested that should state in the document itself, the 20%
46 of the Impact Fee Analysis and show the actual calculation itself. It would show the
47 discount as well. **Consensus of the Council:** Identify the 20% of the Impact Fee
48 Analysis and show the calculation.
49

50 **Motion:** Council Member Marshall moved to adopt ordinance No. 24-012,
51 amending Title 2 of the Town Code establishing the updated limits for
52 the Water and Wastewater Impact Fees with the change to show the

Council's intent to charge 20% of the \$23,410.74 + \$969.18 to set the maximum impact fee for sewer to show to be \$5,651.32. Council Member Tidwell seconded the motion.

Action: **Motion carried 4-0-0 (summary: Yes = 4 Vote: Yes:** Council Member Marshall, Council Member Tidwell, Council Member Freeberg, Mayor Calloway. **Absent:** Council Member Ricks).

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

The Council reviewed the tentative Planning Commission Agenda for September 2, 2024.

- Subdivision Code Public Hearing and Recommendation to Council.

The Council reviewed the tentative Town Council agenda for September 10, 2024. Council Member Tidwell reported that he will be absent from the September 10th meeting.

- Public Hearing / Ordinance for Subdivision Code
- Ranger Court & Elk Drive SAA Public Hearing
- Final Assessment Ordinance for Snowshoe/Toboggan SAA
- 275 East and Circle Drive SAA Notice of Intent
- Maintenance Shop Parking Lot Paving Contract
- Construction Material / Construction Parking Discussion

G. ADJOURNMENT

Motion: Council Member Freeberg moved to adjourn the regular meeting of the Town Council. Council Member Marshall seconded the motion.

Action: **Motion carried 4-0-0 (summary: Yes = 4 Vote: Yes:** Council Member Marshall, Council Member Freeberg, Council Member Tidwell, Mayor Calloway. **Absent:** Council Member Ricks).

The regular meeting of the Town Council was adjourned at 2:40 p.m.

Date Approved

Nancy Leigh, Town Clerk