

City of La Verkin

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La Verkin City Council Special Meeting Minutes

Wednesday, November 6, 2024, 6:00 pm.

Council Chambers, 111 S. Main, La Verkin, Utah

Present: Mayor Kelly Wilson; Council Members: Patricia Wise, Blair Gubler, Micah Gubler, Darren Prince, and Richard Hirschi; Staff: Kyle Gubler, Fay Reber, Chief Nick Nuccitelli, and Nancy Cline; Public: Ben Willits, Matt Ence, Nick Wright, Maridee Johnson, La Verkin City Royalty.

A. Called to Order –Micah Gubler gave the invocation/thought and Pledge of Allegiance at 6:00 pm.

B. Presentation: Maridee Johnson introduced the La Verkin City royalty, and they sang a jingle.

C. Consent Agenda: (Items on the consent agenda may not require discussion. These items will be a single motion unless removed at the request of the Mayor or City Council.)

1. Declarations of conflict of interest
2. Agenda
3. Meeting Minutes October 16, 2024 regular meeting
4. Checks & Invoices: \$88,415.31

The motion was made by Councilwomen Patricia Wise to approve the consent agenda as written, including the minutes of the October 16, 2024, regular meeting and Checks and Invoices in the amount of \$88,415.31, second by Councilman Blair Gubler. Roll Call Vote: Micah Gubler-yes, Wise-yes, Blair Gubler-yes Richard Hirschi-yes, Prince-yes. The motion carried unanimously.

D. Business:

1. Discussion and possible action to approve the Development Agreement with America First Credit Union for approximately 490 acres of land located near the Eastern edge of La Verkin City's current municipal boundaries.

Mayor Wilson asked Fay to explain the changes to the agreement.

Fay explained that after the Planning Commission approved this a couple of weeks ago, there was still some concern amongst the members. Their vote wasn't unanimous. One of the Planning Commission members abstained from voting. There were some concerns about the agreement and provisions. They recommended approval subject to various provisions being changed. Within the next couple of days, staff, a few commission members, and the council met and agreed to shorten the Development Agreement and what was important to them to remain. He redrafted the agreement and sent it to the City Council and the developer on Tuesday of this week. He highlighted in red those additional changes. He also sent a copy of that to Ben and Matt, who responded this afternoon with some additional changes they would like to see made to the agreement. Their version of the agreement with those changes was sent to the council late this afternoon. We could make all those changes if the council is comfortable with what's drafted. And if we needed to approve the agreement subject to those changes being made, we could do that this evening. The alternative, of course, is if you don't feel comfortable doing that and you want to see the final product, we can table this and continue for a couple of weeks. He discussed the changes outlined in red. On page one, the first change is that we've referred to Title 10, Chapter 15, Articles A through E. That's the planned community development ordinance, not just a portion, but the entire ordinance. Which already exists. If you turn to page 3, at the top of the page, there is some concern. We wanted to ensure that we didn't end up with a project where the whole hillside was scarred up with grating, and then the project faltered and just left a big eyesore up there. The term development activity included grating all or a portion of the project; that clause was amended to add that provision. At the bottom of page three, we also wanted to add a provision to benefit future councils and people who may not have gone through this process. We wanted to acknowledge and agree that no development would occur on the property until

satisfactory arrangements have been made to extend the property's water, sewer, and power. On page five, paragraph four, we added this provision. The sentence is, upon approval of the PCD project plan, the sub-developer or sub-developers shall apply for final plan approval. For each specific phase being developed as required by city ordinance, that sentence is specifically out of our PCD ordinance. Paragraph 8 on page 6 there had been some language in the agreement previously that we took out, but I felt like it was important to put back in, clarify, that the developer would be required to pay for all project improvements, all those improvements necessary to serve his project, and then also to pay a portion of the cost of making system improvements. For example, upsizing of lines and some of those things that we knew would be necessary, but that would be subject to reimbursement through a reimbursement agreement. The biggest issue he saw tonight was paragraph 12 on page 7. He didn't want to end up with a project where we have a developer who's healthy financially. But he wants to convey the project to another developer who may not have the financial capability or wherewithal, and the project stalls, and we're left with a big eyesore. He added language to paragraph 12 that said the developer would not assign its rights and responsibilities as master developer of the project without the city's written consent, which consent shall not be unreasonably withheld. They want to be able to sell the property to whomever they want to sell it to. He changed the agreement so that America First Federal Credit Union won't be referred to as the developer; they'll be referred to as the owner of the property, and we'll include a provision in the recitals that recites the fact that we all understand that the owner has the right to assign the project to the developer, whoever that may be. That entity will then become the developer under the agreement. All the responsibilities and duties under the agreement would then apply to that entity as a property developer, and that developer wouldn't be able to convey his rights without the city's consent. They were concerned about some language regarding vested rights in the development agreement. That kind of language is very typically found in a development agreement. He pointed out to Matt that some specific language in our ordinance already provides for vesting development rights according to the community development project plans. The bank approved that.

Councilwoman Wise clarified on the second line down from the red: "Designing the construction of all major on-site and off-site infrastructure. They want to include the public after off-site."

Fay commented that he didn't think that was, from our standpoint, a problem.

Councilwoman Wise asked if this means that the design of all major on-site and then off-site construction is public, so the public only refers to the off-site, not the on-site.

Fay explained that the on-site improvements would be project-specific only to his project. They won't necessarily be public infrastructure or persistent improvements. All of this will be further defined when we go through the PCD.

Mayor Wilson commented that the developers would also be responsible for off-site infrastructure, which is public infrastructure that provides water and sewer to the project. So, off-site infrastructure needs to be included.

Matt Ence explained that the purpose of that request was just because the way the development will ultimately flow is, at some point, some portions of the property will be sold to builders who will build homes, and all of that infrastructure that's associated with that development down the road, won't necessarily be the master developer that's building it. The idea was just to make a distinction that the developer would be responsible for designing and directing the construction across the whole project, not just the public infrastructure. It's meant to cover both the onsite and the offsite infrastructure. But that was the only purpose to make that distinction. They don't want anyone to read it later and say, well, the developer was supposed to be responsible for this residential subdivision, which was not even contemplated initially.

Councilwoman Wise replied that her question was just in the reading; it's all major public on-site and off-site public infrastructure. So, in other words, on-site, if the public only refers to off-site, then that leaves the question, well, so are they responsible for the public on-site, like the parks and streets?

Matt explained that he thought the intent was for the public to be responsible for the on-site and off-site activities.

Mayor Wilson commented that this is necessary because the city will receive all the infrastructure on the street.

Fay continued to explain that this was the change he was talking about, and he thought it could be resolved by including language at the beginning of the agreement stating that the credit union is not the developer but the owner and that the parties understand that the owner has the right to assign his rights under the agreement to the developer. Then, the developer would have all these rights and responsibilities under the agreement.

Councilman Prince questioned why we would not assign that, that we determined the prospective buyer was un reputable.

Fay supposed there could be some circumstances, although there's a requirement that our consent is not unreasonably withheld. We'd have to have some good reason for that, and his experience with these kinds of clauses is that they're almost uniformly allowed to assign rights under them.

Mayor Wilson asked if the developer could sell off a piece, and the new developer had to obey the Development Agreement.

Fay agreed and explained that this is about vested rights, the clause you typically find in a development agreement. A provision in our ordinance specifically gives the developer vested rights in the development agreement after approval. He and Matt talked and agreed that we should simply take that language from our ordinance and include it in the agreement. He proposed we add a new paragraph to the agreement that gives the developer vested rights according to the terms and conditions of our ordinance and then refer to the specific paragraph of the agreement.

Matt clarified that changing it so that it references the ordinance that would be perfect for them.

Councilwoman Wise wanted clarification on the availability of services at the bottom of page 3, the red line. No development approval shall be given; no development activity will occur on the subject property until satisfactory provisions have been made to extend water, sewer, and power. So, that satisfactory provision is when nothing will be developed without water. Is that when a contract is signed with the Water Conservancy District and the developer to start a water tank, which could take several years? Or could the development start when the water tank is at a reasonable level of completion? This says once there's a signed contract on a water contract or a water tank or sewer, groundbreaking could start, but then the sewer and water could be a problem.

Fay explained you could include it until satisfactory provisions have been made, as determined by the city council.

The councilwoman explained by making an effort now on the development agreement, when we get to the PCD itself, which is the most important document that will happen, all of these concerns will have been addressed.

Fay replied he thought everyone would understand it refers to the PCD.

Councilwoman Wise had another concern about the wording on page 7, item number 12, and the rights and responsibilities of the master developer of a project without the written consent of the city. Should that be without the written consent of the city or the city council?

Fay clarified it should say City Council.

Councilman Blair Gubler said they had discussed many changes back and forth tonight. He didn't see why they couldn't make all those changes and wait another 15 days for the next meeting. That way, we can read it as a completed document. He would like to read it when it's completed to see everything they discussed tonight included.

Matt wanted clarification regarding whether the infrastructure is satisfactory before the development occurs. He wanted to make sure he understood the conclusion. Are we tying that now to the project's approval? Did I understand that was the discussion, or is it just a general approval by the city council?

Fay asked if he was talking about water, sewer, and power.

Matt replied that there would be potential development approvals to begin the work on those things. It's a bit of a chicken and egg thing, and he certainly doesn't want to put a future developer in a situation where they can't get development approval because they don't have the services yet. They can't finance or build the services because they don't have the development approval. He wanted to ensure he understood what we said would be required before the developer could pull the grading permit. If approval of a project plan made a lot of sense to him, that would be the normal process they would go through. They would come to you with their plan and get it approved, and then they could go and pull a grading permit. That's the way it usually works.

Fay understood that he thought to tie it to the approval of the project plan.

Councilwoman Wise was concerned that the project plan could be approved reasonably soon. The water tank and the sewer aren't going to happen for several years, so then we have a big blight upon the hill because they've done mass grading and then the economy goes south, and we still have all this grading that's happened scarring of the land. She was concerned that the city could approve the developer's PCD before finishing that water tank. They're eager to see what the grates are and what the contours are, and they go in and start grading. And then it takes another five to seven, eight years for anything to happen. Her question to Matt was if he had a project as large as this one. As much money is involved, and the water tank and sewer conditions are two huge infrastructure issues, what is the reasonable time for a developer to start grading before that water tank construction starts?

Matt agreed that is a valid concern. We don't have a project plan. We don't know what a developer would want to do on the property, specifically regarding phasing. It is possible to grate the property without water service. They could bring water in for things like dust control. This is all kind of speculative discussion about what the developer might need. His perspective on it, though, is that the city ultimately has control over when certain things happen. When the PCD plan is approved, the first grading permit will be issued. If there's a concern specifically about grading and the impact of grading on the property, we can talk about that. Here we're talking more generally. Can any development activities start on the property before adequate services are provided? If they ask a developer to fully finance and construct a water tank, water lines to the property, and sewer lines before they can even push the dirt yard, that may be a lot to ask. He was trying to preserve flexibility. He was trying to make sure this remains marketable for my client.

Councilwoman Wise asked what a reasonable compromise would protect the city. Right now, the water tank could be on BLM or STLA land, and both have issues with munitions there. That water tank might not happen for some time.

Fay explained that under our PCD ordinance, the water tank's location and all of those issues are included in the project plan approved by the city. When they come to the city with the project plan, the city can ensure we get what we want regarding the timing of grating. The grating is all part of the project plan.

Councilwoman Wise asked if the developer could get his financing before the PCD is approved. Let's say we let it slide on this development agreement, but then on the PCD, we insist.

Matt replied that they discussed having a PID or one or more PIDs to help finance the infrastructure. He explained that with PIDs and issuing bonds to the bond market, the bonds are much more marketable if there's an approved master development plan like a PCD. But it's not necessarily a hard and fast, absolute requirement, but it makes the ability to issue bonds and get that financing more feasible. He thought it made sense to tie this to the PCD approval. They would have so much more information at that stage than he could give now. And those kinds of issues, the timing of grading, how much land can be graded at any given time, how that will be phased, what the timing will be relative to improvements being made, that's the ideal time to talk about those things. When you have a plan in front of you that you can look at, the developer can say, "This is what we want to do; this is how we plan to finance it."

Mayor Wilson agreed it was best to tie it to the PCD approval.

Ben commented on what happens if the economy tanks, and again, say half that site is now mass grating. For example, in Washington, we had a big project. They had to have an off-site water line with a substantial 18-inch water line that we had to pull from the tank up the hill. And so, with the city, we worked out through the PCD that that first phase was not pulling a single building permit until that water line was brought down. But because we're starting to spend tens of millions of dollars on getting all the offsites for the first phase, they want to see activity on something on-site. We could mass grate to the clubhouse in this case, which is just the entry road, the clubhouse, and the front improvements, and we couldn't do anything else from a building standpoint or any other phase in the project until that waterline got brought down. With the PCD, and back to Matt's point, we have no idea what that first phase will look like. Hypothetically, if we now have to build an entirely new intersection because it's going to need acceleration, deceleration lanes, a new signal, all these things coming off the highway, this is all UDOT now related, you're going to have to pull that into a first chunk of a site, which they're probably going to start setting up some commercial venue that's going to have marketing.

Hypothetically, you're not going to get any more grating permits other than making your new improvements for the UDOT right away and your first phase, which becomes your sales center, let's say. You're not going to mass grate 450 more acres. You only do the first 40, including that intersection. That's how it gets tied to the PCD of each phase as they come in and get financed. Because if they're saying we're going to wait for five years until everything is there and then we're going to start, that usually doesn't bode too well for whoever the financier is. They want to see some activity moving beyond just the raw infrastructure.

Matt agreed the PCD ordinance already gives you the power to make those determinations at that stage.

Councilwoman Wise commented that everything we sign should be written well. And if it's not in writing, it doesn't count. She and the city council should be able to approve a clean copy, and we'd only be delaying you until the next council meeting. Then, I'd be more than willing to sign it.

Ben replied that they wanted to make sure everyone was comfortable. This is a big deal; they understand it will also set precedence for the city's future development. They wanted to make sure that these were all the changes.

They could make changes forever, but at some point, they want to say, pencil's down, we're comfortable with it now.

Councilwoman Wise suggested they vote to approve the development agreement with the changes. Once they were made and we all got a clean copy, we approved it through an email to Fay. They have done that once before.

Mayor Wilson suggested entertaining the motion to approve the clean copy after everybody had read it and approved.

Fay agreed to make those changes and submit a copy to Matt and Ben so they can review it and ensure it says what needs to be said. Once we get their approval, he can send it to the council. Then, he will know that both sides have agreed on the development agreement.

Kye clarified that it could be done by Wednesday the following week.

Fay agreed they should make a motion to approve the agreement, subject to the evening discussion. A review of a clean copy. Review of a clean copy and approval by each of the council members. If there's no approval from the council, we will put it on the agenda for the next council meeting.

The motion was made by Councilman Micah Gubler to approve the Development Agreement with America First Credit Union for approximately 490 acres of land located near the Eastern edge of La Verkin City's current municipal boundaries, with the stipulations after all the changes are made the City Council will review the clean copy and notify Fay Reber of their approval, second by Councilman Blair Gubler. Roll Call Vote: Micah Gubler-yes, Wise-yes, Blair Gubler-yes, Richard Hirschi-yes, Prince-yes. The motion carried unanimously.

2. Discussion regarding the Capital Improvement list.

Kyle explained on the first page is the roads and infrastructure improvements that they need.

Mayor Wilson suggested they take the 100 West off.

Kyle agreed to add 100 West to the future. Separate that from the 480 South project.

Councilwoman Wise asked if they would pave 480 South from State Street to the Hot Springs.

Kyle commented that the discussion is for the council to decide. whether you want to add to, reorganize, or reprioritize what we've got there or if there's another project you want to see. We don't have to go in that order, but we must have them listed to know they're there.

Councilwoman Wise suggested under parks and rec that it would be helpful on this list if you could have what was needed under each park to keep it organized for them to see.

Kyle commented he will be meeting about the public input on Wallace Park. The order would also depend on the cost.

Councilwoman Wise suggested covering the playground. The citizens made a lot of requests for it.

Kyle agreed and said it was in the plan.

Councilman Micah Gubler suggested building the pickleball courts. It would never get cheaper; doing them soon would be cheaper than waiting, and prices would increase.

Councilwoman Wise talked with Tara McKee, Deputy Director of the Outdoor Recreation Grant Program. She mentioned they would have funding for park amenities, pickleball courts being one of them. They wouldn't know how much funding it was, but we could get a considerable amount toward that. But they would have to have the application in by March 15th.

Kyle was concerned that it was a commitment, and they would have to have bonding in place and a commitment to pay the share back because the pickleball courts would not cost a couple hundred thousand dollars. More like 700-800,000.

Councilman Micah Gubler suggested possibly building it in phases, doing two and then adding two later, or not doing the lights and trying to get them in later.

Kyle added that there are things we can do to help with that. He reported that the RAP tax had passed. It's good for another 10 years, meaning we must pay it back in 10 years unless we get a bond.

Councilwoman Wise added how much it would cost, whether we can get money to match, and then how much we would have to pay if it's feasible to start now. How possible would it be just to have two courts without lights and have the room set aside for two more courts? She would like the council to consider setting aside money for trail improvements. She discussed grants for new restrooms at the parks and trail sites.

Kyle mentioned those grants; they're not 100%, so whatever grant you get, you will at least be 50%.

Councilman Prince suggested looking for people in our community who want to volunteer and donate. He had experiences and examples of the community donating time and money.

Kyle reported they would be improving the "L" after Winterfest.

E. Mayor & Council Reports:

Mayor Wilson: Had Nick Wright from the Fire District give a report. He gave the statistics for last month on calls going into the Fire District. They provided services for the Red Bull Rampage.

Blair Gubler : Nothing to report.

Richard Hirschi: Reported that the Ashcreek sewer plant is scheduled to be completed in January 2026.

Micah Gubler: Reported the police department has had a lot of training this time of year. Officer Smith completed leadership training held in Washington City last month. Officer Jones has been working closely with the family in our area, developing a plan for a member of their family who has continuously contacted the police for quite a while, trying to come up with a plan to help with the mental illness issues there. Recently, this week, a citizen vandalized multiple businesses and interrupted power for the phone company and other businesses. Through the department's investigation, they made an arrest involving this individual and notified the businesses. He wanted the Chief to know that the department had a lot of unity among the officers and a good reputation with the community.

Winterfest is in full swing. There is a sign-up sheet for volunteers at the information booth.

The youth council will be riding with the city council on the float

Wreaths Across America is December 14th at 9 a.m. The Christmas Eve program will start at 6 p.m.

Patricia Wise: Reported on Planning Commission. Discussed two events. Bike event in St. George and the County Ribbon cutting on SR-18 trail. The BLM is trying to get kind of camping back on target, designating sites, deciding how to go about that, and it'll be in multiple locations that they'll be discussing.

Darren Prince : Nothing to report.

Citizen Comment & Request for Future Agenda Items:

No comments were made.

H. Adjourn:

Mayor Wilson closed the meeting at 7:27 p.m.

12-04-2024
Date Approved



ATTEST: Nancy Cline
Nancy Cline
City Recorder

Kelly B. Wilson
Mayor Kelly B. Wilson