

Mayor
T. Colten Johnson
City Manager
Kyler Ludwig
Treasurer
Danielle Ramsay



City Council
Arlon Chamberlain
Scott Colson
Chris Heaton
Boyd Corry
Peter Banks

Kanab City Planning Commission Staff Report

File #PLANDA25-005

Date:	June 2, 2025
Meeting Date:	June 3, 2025
Agenda Item:	Public Hearing to discuss and recommend to City Council a Development Agreement for Ed Browning
Subject Property Address:	751 S Hillside Dr.
Property Owner:	Ed Browning
Applicant Agent:	
General Plan Designation:	Single Family Residential
Parcel #:	K-321-1

Attachments:

Exhibit A: Development Agreement

Summary:

Property Owner, Ed Browning is requesting a development agreement for parcel K-321-1. The development agreement is to allow an exception to the Design Standards for Construction and to allow the sewer lateral to be placed on city easement and maintained by the property owner.

Suggested Motion(s):

I make a positive recommendation to accept the Development Agreement for Parcel K-321-1 as shown in exhibit A of the staff report.

I make a negative recommendation not accepting the Development Agreement for Parcel K-321-1 as shown in exhibit A of the staff report.

I make a positive recommendation to accept the Development Agreement for Parcel K-321-1 as shown in exhibit A of the staff report with the following amendments .

I move that we continue the discussion on the Development Agreement to:

– A Western Classic –

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Exhibit A: Development Agreement

— A Western Classic —

WHEN RECORDED, RETURN TO:
KANAB CITY
26 N. 100 E.
Kanab, Utah 84741

Tax ID # K-321-1

DEVELOPMENT AGREEMENT AND GRANT OF EASEMENT

THIS DEVELOPMENT AGREEMENT AND GRANT OF EASEMENT (the "Agreement") is executed and entered into by The Browning Family Trust, dated June 4, 2012 (the "Grantor" or "Owners") and Kanab City, a municipal corporation and political subdivision of the State of Utah (the "City" or "Grantee"). (Each individually a "Party" and collectively the "Parties").

RECITALS

A. The Grantor owns the property identified by parcel/tax ID # K-321-1 in the records of the Kane County Recorder's Office, which property location is commonly referred to as 751 S. Hillside Drive, Kanab, Utah 84741, and is further described as (the "Property"):

ALL OF LOT 1 BROWNING HILLS A MINOR SUBDIVISION (being in Sections 27 and 34).

B. The Grantor owns a home on the Property that was serviced by a sewer wastewater line that traversed the lot to the north of the Property (parcel K-321-3), which lot to the north is currently being developed, requiring the sewer wastewater line servicing the Grantor's home to be moved.

C. Due to the elevation of the Grantor's property and established home, the flow of the sewer line from the Grantor's home will not flow to the Grantee's sewer main by gravity, if Grantor is required to follow the slope and depth standards required in Kanab City's (Grantee's) adopted ordinances.

D. The Grantor desires to comply with the sewer wastewater standards and requirements included or adopted by State law, in lieu of the more restrictive requirements of the Grantor's ordinances, to allow for the wastewater from the Grantor's home to flow to the Grantee's sewer main on Hillside Drive, Kanab, Utah.

E. The Grantor will be responsible for purchasing the necessary materials, utilizing licensed professional(s), and installing the sewer wastewater line necessary. Installation of the sewer wastewater line is subject to the inspection and approval of the Grantee's Public Works Director.

D. Grantor and any successive owners of the Property will be responsible for the maintenance, upkeep, repair, and replacement of the sewer wastewater line from where it connects to the Grantor's home on the Property to the point at which it connects to the Grantee's sewer main line.

AGREEMENT

1. The Property to Be Bound. Grantor's agreement to pay for certain expenses, and maintain, repair, and replace certain infrastructure, as set forth in Section 2, which shall be binding upon and run with the following described tract of land in Kane County, State of UTAH ("Property"):

ALL OF LOT 1 BROWNING HILLS A MINOR SUBDIVISION (being in Sections 27 and 34), according to the Official Plat thereof, on file in the Office of the Recorder of Kane County, State of Utah.

[The Property is commonly identified as parcel/tax ID # K-321-1 in the records of the Kane County Recorder, and also known as 751 S. Hillside Drive, Kanab, Utah 84741.]

2. Authorization for Deviation from Grantee's Ordinances and Grantor's Duty to Pay Development Expenses, Maintenance, Replacement.

- a. Grantee agrees and authorizes Grantor to deviate from Grantee's *Standard Specifications for Design & Construction* ("Design Standards") only in the aspects related to slope and depth as reasonably determined to be necessary, as it relates to installing a replacement sewer wastewater line from the Grantee's main line to the Grantor's home on the Property. Where deviating from the Grantee's Design Standards, Grantor shall strictly comply with the requirements of Utah Code and any applicable Utah Administrative Rules.
- b. Upon the conditions outlined below, the Grantor shall be responsible for paying the cost of connecting/reconnecting to the Grantee's sewer system, including, but not limited to the cost of parts, supplies, and labor to install sewer wastewater lateral line from Grantee's main line to the Grantor's home on the Property.
- c. The sewer wastewater line installed shall be subject to the inspection and approval of the Grantee's Public Works Director. Thereafter, the Grantor shall bear the expense and responsibility to maintain, repair, and replace, if or when necessary, the sewer wastewater lateral line from the sewer main line out.
- d. Upon installation, inspection, and acceptance, the installed sewer apparatus shall become the property of the Grantee; however, the transfer of

ownership shall not relieve the Grantee of the duty to maintain and replace all or portions of the sewer apparatus or pay the costs for the same.

3. Grant of Easement. Grantor does hereby grant and convey to Grantee, and Grantee's employees, contractors, subcontractors, their agents and representatives, and their successors and assigns, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, a permanent public utility easement ("Easement"), for the purpose described herein, over the Property, as described herein. The Easement shall include a fifteen-foot (15') wide public utility easement following the path of any public infrastructure installed or anticipated to be installed, as contemplated by this Agreement (collectively the "Easement Property").

- a. The fifteen-foot (15') public utility easement shall be seven and one-half feet (7 ½') on each side of the centerline of the public infrastructure installed/anticipated to be installed.
- b. The Easement Property shall include the right, privilege, and easement to enter in upon Grantor's Property to place, construct, install, operate, repair, maintain, upgrade, relocate, inspect, monitor and replace thereon and under the surface thereof and in or upon all driveways, paths, and landscaped/un-landscaped areas abutting the Easement Property, necessary public infrastructure, as may now or hereafter be necessary or convenient for the operation of any public utility system, in accordance with federal, state, and local law (collectively, the "Facilities").
- c. The Facilities erected within the Easement Property, including but not limited to the sewer apparatus, shall remain the personal property of the Grantee. Grantee shall have the right to inspect, maintain, rebuild, remove, repair, improve, and make changes, alterations, substitutions, and additions in and to the Facilities as it may from time to time deem advisable, including the right to increase or decrease the number and size of the installed Public Infrastructure.
- d. The Grantee shall at all times have the right to keep the Easement Property clear of buildings, structures, or other obstructions, trees, shrubbery, undergrowth, and roots. The Grantor expressly authorizes the Grantee to clear the Easement Property to the minimum extent necessary to inspect, maintain, repair, or replace any Public Infrastructure within the Easement Property.
- e. The Grantor may use the Easement Property for any purpose not inconsistent with the rights hereby granted, provided such use does not interfere with or endanger the construction, operation, and maintenance of the Facilities.

- f. The Grantor shall indemnify and hold harmless the Grantee from intentional damage to the grade of the soil, which may result from the construction, operation, and maintenance of the Facilities on Grantor's Property, except damage intentionally caused by the Grantee. Any damage to structures, plantings, or landscaping during the construction, operation, and maintenance of the Facilities shall be the responsibility of the Grantor, if the damaged structure or plantings are within the Easement Property. The Grantor shall be responsible for maintenance of the Easement Property, including mowing, maintaining the level of grade of the ground and any repairs necessary due to nature.
- g. Grantor covenants that it is the owner of the property herein identified as Grantor's Property and without a lien or lender for which written consent would be required.
- h. The Easement, rights, and interest granted herein shall constitute covenants running with the land, and shall burden Grantor's Property as the servient estate, and shall be binding upon Grantor, its successors, assigns, and any person acquiring, leasing or otherwise owning an interest in the Easement Property.
- i. The grant of easement shall not unburden or alleviate the Grantee of the Grantee's responsibility to maintain, repair, and replace, if or when necessary, the sewer wastewater lateral line from the sewer main line out.

4. Default. Failure by a Party to perform any of the Party's obligations under this Agreement within a thirty (30) day period (the "Cure Period"), after written notice thereof from the other Party has been provided, shall constitute a default ("Default") by such failing Party under this Agreement; provided, however, that if the failure cannot reasonably be cured within thirty (30) days, the Cure Period shall be extended for the time period reasonably required to cure such failure so long as the failing Party commences its efforts to cure within the initial thirty (30) day period and thereafter diligently proceeds to complete the cure. Said written notice of default shall specify the nature of the alleged Default and the manner in which said Default may be satisfactorily cured, if possible.

5. Remedies. If the Default is cured, then no Default shall exist and the noticing Party shall take no further action. Upon the occurrence of an uncured Default under this Agreement, the non-defaulting Party may exercise the following rights:

- a. The Grantee/City: (i) may withhold approval of any or all building permit(s) or certificate(s) of occupancy applied for by the Grantor, but not yet issued; and (ii) shall be under no obligation to approve or to issue any additional building permit(s) or certificate(s) of occupancy for any building until the breach has been corrected by the Grantor.

- b. The Parties to this Agreement recognize that the Grantee has the right to enforce its ordinances and the terms of this Agreement, and any amendment thereto, by seeking an injunction to compel compliance. In the event the Grantor, its successor or heirs, violate the ordinances of the Grantee or violate the terms of this Agreement, or any amendment thereto, the Grantee may, without declaring a Default hereunder or electing to seek an injunction, and after thirty (30) days written notice to correct the violation (or such longer period as may be established in the discretion of the Grantee or a court of competent jurisdiction if the Grantor has used its reasonable best efforts to cure such violation within such thirty (30) days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been rectified by the Grantor.
- c. Any assertions of breach or default asserted by the Grantor against Grantee shall first be handled as a Land Use Appeal and addressed in accordance with the administrative appeal process outlined in Utah Code, Title 10, Part 7, and the Kanab City Land Use Ordinance, Chapter 3, and other applicable provisions of the Kanab City ordinances. All administrative processes and remedies must be exhausted prior to seeking judicial review of an appeal authority's final decision, but which final decision is thereafter subject to review by a court of competent jurisdiction.

6. Grantee's Additional Remedies. When the Grantee asserts that the Grantor is in default, and the default remains after the Cure Period, the Grantee shall have the additional following remedies:

- a. *Enforcement of Security.* The Grantee shall have the right to draw on any security posted or provided in connection with the improvements to the Property, relating to remedying the particular default, consistent with the Grantor's warranty under Kanab City ordinances or any public improvement agreement regarding such improvements.
- b. *Claim Reimbursement – Public Infrastructure.* The Grantee shall have the right to demand repair or replacement of failed Public Infrastructure/System Improvements or reimbursement from the Grantor for costs of remedying a particular failure or default relating to the Public Infrastructure/System Improvements, in excess of any security posted or provided, if any.
- c. *Withholding Further Development Approvals.* The Grantee shall have the right to withhold all further reviews, approvals, licenses, building permits, certificates of occupancy, and/or other permits for the development of the Property.

7. No Monetary Damages. The Parties acknowledge that Grantee would not have entered into this Agreement, nor any amendment thereto, had it been exposed to

monetary damage claims from the Grantor, or Grantor's successors, or assigns, for any breach thereof except as set forth herein. As such, the Parties agree that specific performance, as may be determined through the Kanab City land use administrative appeals process (the final decision of which is subject to review by a court of competent jurisdiction), is the only intended remedy for any breach of this Agreement. Accordingly, the Parties waive all other remedies in law or equity, including monetary damages (e.g., actual, future, and speculative damages, including economic, special, punitive, or other monetary damages).

- a. In the event of a dispute over or relating to the terms of this Agreement, or any amendment thereto, or any Party's performance under the same, the Parties in any action or proceeding brought in connection with such dispute or the enforcement of this Agreement and any amendment thereto shall cover their or its own costs, including reasonable attorney fees, whether incurred in litigation or otherwise.
- b. In the event that a dispute over or relating to the terms of this Agreement or any amendment thereto is resolved short of a final contested decision by a court of competent jurisdiction, the Parties shall cover their own costs, including reasonable attorney fees, whether incurred in litigation or otherwise. The Parties agree that an advisory opinion rendered by a representative of the Utah Property Rights Ombudsman, or another similarly situated public official or agency, while potentially helpful in reaching a resolution to a dispute between the Parties, shall not be considered grounds for awarding attorney fees.

8. Governmental Immunity. The Grantee is a governmental entity under the Governmental Immunity Act of Utah, Utah Code §§ 63G-7-101 et seq. (the "Immunity Act"). The Grantee does not waive any defenses or limits of liability available under the Immunity Act and other applicable law. The Grantee maintains all privileges, immunities, and other rights granted by the Immunity Act and all other applicable laws. Nothing in the Development Agreement or any amendment thereto should be interpreted as a waiver of the Grantee's privileges, immunities, and other rights granted by the Immunity Act and all other applicable laws.

9. The Grantor shall provide improvement completion assurances and improvement warranties for public infrastructure improvements authorized in Utah Code, Title 10, Chapter 9a, and as outlined and required in Kanab City ordinances.

10. Binding on the Property. This Agreement shall be recorded against the Grantor's property thereby putting future prospective purchasers on notice as to the terms and provisions contained herein. The obligations contained within this Agreement shall run with the Property, binding all successors, heirs, and assigns of the Property.

11. No Third-Party Beneficiary. This Agreement is made for the sole protection and benefit of the Grantor and the Grantee and their assigns. No other person shall have

any right of action based upon any provision of this Agreement, whether as third-party beneficiary or otherwise. It is specifically understood by the Parties that: (i) all rights of action and enforcement of the terms and conditions of the Development Agreement shall be reserved to the Grantor and the Grantee, and their assigns; (ii) the development and use of the Property is a private development; (iii) the Grantee has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property; and (iv) the Grantor shall have the full power and exclusive control of the Property, subject to the obligations of the Grantor, and grant of easement, as set forth in this Agreement.

12. Notices. All notices and communications required by or pertaining to the Development Agreement shall be sent to the Parties at the following addresses:

Kanab City
Attn: City Manager
26 North 100 East
Kanab, Utah 84741

Ed Browning
751 S. Hillside Drive
Kanab, Utah 84741

13. Counterparts. This Agreement may be executed in any number of duplicate originals or counterparts, each of which, when so executed, shall constitute in the aggregate but one and the same document.

14. Waiver. No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision, regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding on the Grantee or the Grantor unless executed in writing by the waiving party.

15. Reasonableness. Except as otherwise stated to the contrary in this Agreement, when the consent, approval, or agreement of Grantor and/or the Grantee is required or contemplated under this Agreement, such consent, approval, or agreement shall not be unreasonably withheld, conditioned, or delayed; provided, this provision shall not bind the Grantee with respect to its legislative actions.

16. Time of the Essence. Time shall be of the essence with respect to the duties imposed on the parties under the Development Agreement and any amendment thereto. Unless a time limit is specified for the performance of such duties, each party shall commence and perform its duties in a diligent manner in order to complete the same as soon as reasonably practicable.

17. Hold Harmless. The Grantor agreed to and shall hold the Grantee, its officers, agents, employees, consultants, special counsel, and representatives harmless from liability for damages, just compensation, restitution, or judicial or equitable relief that may arise from or are related to any activity connected with the development of the Property, including approval of the development activity, this Agreement, and any amendment thereto; the direct or indirect operations of the Grantor or its contractors, subcontractors, agents, employees or other persons acting on its behalf which relates to the

development of the Property; or which arises out of claims for personal injury, including health, and claims for property damage.

- a. The hold harmless agreement of Grantor, Grantor's successors, heirs, and assigns, shall not be applicable to any claim arising by reason of the willful acts or intentional tort actions of the Grantee or relative to any directly related breach by the Grantee of its obligations under this Agreement.
- b. The Grantee shall give written notice of any claim, demand, action, or proceeding which is the subject of the Grantor's hold harmless agreement as soon as practicable but not later than thirty (30) days after the assertion or commencement of the claim, demand, action, or proceeding. If any such notice is given, the Grantor shall be entitled to participate in the defense of such claim. Each party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.

18. Applicability of State Law and Kanab City Ordinances.

- a. This Agreement and any amendment thereto shall be governed by the laws in the State of Utah.
- b. All provisions of State Law and the Grantee's ordinances shall be applicable to the development and use of the Property, except to the extent this Agreement or any amendment thereto is more restrictive than State Law or modifies provisions of the Grantee's ordinances.
- c. This Agreement and any amendment thereto does not exempt nor override any procedure, process, necessary approvals, design standards, provision of applicable State law, building code, fire code, or Kanab City ordinance (e.g., General, Land Use, and Subdivision) except where specifically outlined, and as permitted by law.
- d. The Grantor shall be entitled to application of the relevant local ordinances, laws, and fees in effect at the time a complete application is submitted, except as outlined or restricted herein.
- e. The Grantor shall submit the necessary application(s) with requisite supporting documentation and plans, preliminary and final if required, for administrative consideration and approval. For administrative applications, the Grantee shall approve such application(s), site plan(s), plat(s), etc., if such items meet the standards and requirements outlined in applicable State Law and local ordinances, or as provided in this Agreement.
- f. The Parties agree, intend, and understand that the obligations imposed by this Agreement and any amendments thereto are only such as are consistent with state and federal law. The Parties further agree that if any provision of

the Development Agreement, or any amendments thereto, becomes, in its performance, inconsistent with state or federal law or is declared invalid, the Development Agreement and any amendment thereto shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of this Agreement shall remain in full force and effect. If the Grantee's approval of the development of the Property is held entirely invalid by a court of competent jurisdiction, this Agreement shall be null and void.

19. Reserved Legislative Powers. Nothing in this Agreement or any amendment thereto shall limit the future exercise of the police powers of the Grantee in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation, and other land use plans, policies, ordinances, and regulations after the date of this Agreement. This Agreement and any amendment thereto are not intended to bind a future governing body of the Grantee to a specific legislative decision. Notwithstanding the retained power of the Grantee to enact such legislation under its police power, such legislation shall not modify the Grantor's rights as set forth within this Agreement or any amendment thereto, unless facts and circumstances are present that meet the compelling, countervailing public interest exception to the vested rights doctrine as set forth in *Western Land Equities, Inc., v. City of Logan*, 617 P.2d 388 (Utah, 1988), or successor case law or statute. Any such proposed change affecting the Grantor's rights shall be of general application to all development activity in the City. Unless the Grantee declares an emergency, the Grantor shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Property.

20. Incorporation of Recitals. The foregoing recitals are true and correct and hereby incorporated by reference as part of this Agreement.

21. The Parties each warrant and acknowledge that (i) they have read and understood the terms of this Agreement; (ii) they have had the opportunity to retain legal counsel of their choice throughout the negotiations that preceded the signing of this Agreement; and (iii) they have entered into this Agreement for reasons of their own and not based upon representations of any other party hereto.

22. The Grantor's Acknowledgment.

- a. The Grantor acknowledges that it has been sufficiently advised orally and in writing by the Grantee (including by way of this Agreement) of any and all rights "under clearly established state law" to which the Grantor is entitled but conceding and giving up by way of entering into the Development Agreement, and will therefore be estopped from a future related claim (i.e., claim of undisclosed or unknown right forfeited through this Agreement). [If a term of this Agreement could be interpreted or constructed to abridge the rights of the Grantor or seen in a light less favorable to the Grantor, it should be considered as notice of a possible if

not an outright concession or abridgment of the Grantor's "clearly established" statutory right(s).]

- b. Grantor further acknowledges that this Agreement is not a condition for the development of the Property, but has been requested by the Grantor for the purpose of acquiring/reacquiring sewer services to the Property, this Agreement being a requirement due to the unique circumstances of the Property. The Grantor acknowledges there are other avenues for developing/using the Property without entering into this Agreement.

23. Entire Agreement. This Agreement represents the entire agreement of the Parties. All other agreements regarding the subject matter addressed herein are merged into this Agreement, which cannot be modified except by written consent of all Parties.

[Signatures on the following pages.]

IN WITNESS WHEREOF, this Agreement has been executed by the Grantor and by the Grantee, Kanab City, acting by and through its City Council by duly authorized persons as of the ____ day of _____, 2025.

GRANTOR:

THE BROWNING FAMILY TRUST, dated June 4, 2012

Edward Browning, Trustee

STATE OF UTAH)
ss.
COUNTY OF KANE)

On the ____ day of _____ 2025, personally appeared before me Edward Browning, authorized individual and Trustee of The Browning Family Trust, dated June 4, 2012, whose identity is personally known to or proved to me based on satisfactory evidence, and who, being by me duly sworn (or affirmed), did say and duly acknowledged to me that they executed the foregoing document on behalf of The Browning Family Trust, dated June 4, 2012.

Notary Public

[Grantee's signature on the following page.]

GRANTEE:
KANAB CITY

By: _____
Colten Johnson, Mayor

STATE OF UTAH)
ss.
COUNTY OF KANE)

On the ____ day of _____ 2025, personally appeared before me Colten Johnson, Kanab City Mayor, whose identity is personally known to or proved to me based on satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that she did duly acknowledge to me that she executed the foregoing document.

Notary Public